

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

This is the 11th day of October 2018.

ORIGINAL APPLICATION NO. 330/01422/2015

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)
HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).

Ashok Kumar son of Ram Ashish Yadav resident of Village Chandpipra District Supaul (Bihar), presently residing at 23/47/112-A, Kidyo Nagar Allahapur, Allahabad 211006.

.....Applicant.

By Advocate: Shri Anshul Nigam/Shri Vikas Budhwar

Shri Uday Singh Yadav.

VERSUS

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Railway Recruitment Board, Opposite North Central Railway Headquarters, near Subedarganj, Railway Hospital, Allahabad through its Chairman.

.....Respondents

By Advocate : Shri Sanjay Kumar Ray/Shri Anil Kumar

Shri Prashant Mathur

ORDER

BY HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

1. Case of applicant Ashok Kumar is that by caste is Yadav belonging to OBC. In response to Centralized Advertisement Notice No. 04 of 2010 issued by respondents, he applied for the post of Commercial Clerk, Account Clerk cum typist and Ticket Examiner under OBC category and had submitted photocopy of his OBC issued by competent authority with his application form. He appeared in the written test on the basis of the admit card issued to him and was informed that his candidature was not considered since he does not belong to OBC category. He was also asked to produce his original OBC

certificate which he could not do so, since he had misplaced the same. Vide letter dated he was informed that his candidature had been cancelled since he could not produce the original OBC certificate and that he had secured 85.202 % marks in the examination held for commercial clerk which was more than the last selected OBC candidate having 83.180 marks. Based on these facts, applicant says that he is entitled to appointment which has been illegally and arbitrarily denied to him. Hence the present O.A. seeking the relief of direction to respondents to consider the case of applicant for appointment to any of the post advertisement in the Employment Notice.

2. In their counter affidavit, it has been averred that the application was found to be invalid as per 6.06 of the employment notice and so, applicant was disqualified. The applicant did not enclosed the OBC certificate with his application form though he was provisionally allowed to appear in the examination on basis of OBC ticked in the application form and when called for document verification, application produced the OBC certificate which was not in prescribed format nor was applicable for the Central Government Services and that applicant cannot derive any benefit of the appended OBC certificate dated 11.12.2014 since the employment notice specifically prescribed the date of publication as 30.03.2010 and closing date as 30.03.2010.
3. In rejoinder affidavit, applicant avers that the respondents have attached a copy of his OBC certificate dated 8.9.2004 issued by Anumandal Padhikari, Supaul, Bihar showing that applicant belongs to OBC.

4. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record as well as the written arguments filed by the parties.
5. So, the limited question is whether the OBC certificate filed by the applicant is, as per, the form prescribed in the Employment notice and if not, what is its effect.
6. To go into the contentions raised by respondents, it would be necessary to look into the terms and conditions of the Employment Notice. The relevant terms reads as under:

"1.15 While all candidates irrespective of community may be considered against UR vacancies, however against the vacancies earmarked for specific community (SC/ST/OBC), only candidates belonging to that community/group will be considered. For this purpose, SC/ST/OBC candidate should furnish Caste Certificate from competent authorities as per the formats given at Annexure III (for SC/ST candidates) and Annexure IV (for OBC candidates. (further in case of OBC candidates, the certificates should specially indicate that the candidate does not belong to the Persons/Sections (Creamy Layer) mentioned in Col. 3 of the Schedule of the Government of India, Department of Personnel and Training OMm No. 3601 2/22/9-Estt. (SCT) dated 08.09.93 & its subsequent revision-through OM No. 36033/3/2004-Estt. (Res.) dated 09.03.2004. The OBC candidate should enclose self declaration of non-creamy layer status in the proforma as given in Annexure-V. The candidates who indicate their community as SC or ST or OBC in their application form but do not enclose the caste certificate in the prescribed format will not be considered as eligible to appear for the examination.

1.16 Candidates belonging to SC/ST/OBC who fulfill required educational qualification/technical qualifications can also apply against UR vacancies. They will, however, have to compete with the UR candidates. No age relaxation will be allowed to such SC/ST/OBC candidates applying against UR vacancies.

6.06. OBC certificate not in the prescribed format or without self declaration of creamy layer. (for consideration of relaxation for OBC".

7. In the present case, the dispute centres around whether the OBC certificate filed by the applicant fulfils the conditions and format laid down in the Employment Notice. Looking to the terms and conditions reproduced above, it is clear that OBC certificate filed by the applicant and placed on record by the respondents with their counter affidavit, the certificate is not, as per, the form prescribed by the Employment Notice or by the Government.
8. The learned counsel for applicant placing reliance upon (1) Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board, 2016 (4) SCC 754. (2) Hari Singh v/s SEC, Laws (DLH) – 2010-4-262 and (3) Union of India v/s Saurabh Agnihotri being O.A. No. 750 of 2002 decided by CAT, Allahabad Bench vide order dated 18.03.2004.
9. On the other hand, the learned counsel for the respondent contended that the stand of the respondents is in accordance with the terms and conditions of the Employment notice and not suffering from any illegality does not call for any interference by this tribunal and the O.A. being meritless deserves to be dismissed. He placed reliance on Special Appeal No. 156 of 2017 titled Gaurav Sharma v/s State of U.P. decided by Hon'ble High Allahabad vide order dated 04.05.2017.

10. The citations quoted applicant are distinguishable and inapplicable to the facts of the present case. The present deal with the question of applicant filing the OBC certificate in a wrong format and not as prescribed by the Employment Notice or as per the format prescribed by the Government of India.
11. In Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board, 2016 (4) SCC 754, the dispute was with regard to acceptance of the OBC certificate submitted after the cut off date fixed by the authorities after publication of the advertisement and before publication of the select list.
12. In Hari Singh (supra), the Hon'ble High Court held that if there is genuine difficulty in applicant obtaining the certificate, the appointing authority should itself verify his claim through the concerned District Magistrate. In the present case, no such difficulty has been expressed by the applicant. In Union of India v/s Saurabh Agnihotri (supra), the result being declared after the inclusion of caste of applicant therein in the list of OBC, the tribunal gave him the relief on the basis of treating him as a member of OBC community. Therefore, both the facts of both the citations are different from the facts of the present case and inapplicable.
13. On the other hand, learned counsel for the respondents relied upon the judgment of the Full Bench as reported in Special Appeal No. 156 of 2017 titled Gaurav Sharma v/s State of U.P. decided by Hon'ble High Court, Allahabad vide order dated 04.05.2017 in which the judgment titled Arvind Kumar Yadav v/s U.P. Police Recruitment and Promotion Board in Special Appeal No.762 of 2016 decided by the Hon'ble High Court Allahabad on 5.12.2016 was upheld.

14. Regarding the judgment of Hon'ble Apex Court in the case of Ram Kumar Gijroya (supra), the judgment dated 4.5.2017 of Hon'ble Allahabad High Court in the case of Gaurav Sharma (supra) has held as under:-

".....In the appeal of Ram Kumar Gijroya, the learned Single Judge of the Delhi High Court following the two precedents referred to above had directed the respondents therein to accept the OBC certificate of the appellant. One of the significant and distinguishing features of Ram Kumar Gijroya, which immediately springs to light is that the advertisement did not prescribe a cut off date at all. The requirement of submitting the OBC certificate was introduced only by a notice issued by Delhi Subordinate Service Selection Board while declaring the final results.....".

Accordingly, the facts in the case of Ram Kumar Gijroya (supra) are distinguishable from the facts of the present O.A. in which as stated in para 3 of the Counter Reply, the provision in para 6.06 of the employment notice/advertisement are very clear about consequences of not submitting the OBC certificate in prescribed format. Hence, the ratio of the judgment in Ram Kumar Gijroya case is not applicable to the present O.A. before us.

15. In the Arvind Kumar Yadav (supra), the Hon'ble DB held that "Learned Single Judge has found as a matter of fact that the first certificate issued on 14th March, 2013 is much prior in point of time and the subsequent certificate produced by the petitioner dated 15th March, 2016 was not in prescribed proforma (Praroop-I), there was recital to the effect that the petitioner had an income of not more than Rs. 8 lacs in last 3 years continuously.

Since the petitioner had failed to satisfy the requirements of the advertisement, as were prescribed by submitting the certificate, we are more than satisfied that the learned Single Judge is right in coming to the conclusion that petitioner is liable to be treated as a General category candidate. No error has been committed by the learned Single Judge while rejecting the claim set up by the petitioner."

16. In view of the law laid down and the facts of the case, we are of the view that since the applicant did not file the OBC certificate in the format as specified in the Centralized Advertisement Notice No. 04 of 2010 or at the most, as per, the format given by the Government of India, we are not inclined to consider the reliefs sought in this O.A. The O.A is accordingly dismissed. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

(Gokul Chandra Pati)

Member (A)

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